



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

DECISION

BCS/171893

PRELIMINARY RECITALS

Pursuant to a petition filed February 03, 2016, under Wis. Stat. § 49.45(5)(a), to review a decision by the Sheboygan County Department of Human Services in regard to Medical Assistance, a hearing was held on March 17, 2016, at Sheboygan, Wisconsin.

The issue for determination is whether petitioner's appeal was timely filed.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED], Economic Support Supervisor
Sheboygan County Department of Human Services
3620 Wilgus Ave.
Sheboygan, WI 53081

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Sheboygan County.
2. The Petitioner applied for and received BadgerCare benefits in April 2015.

3. On September 18, 2015, the agency sent the Petitioner a notice, advising her that BadgerCare+ benefits would be ending for her and her daughter on October 1, 2015. (Exhibit 2)
4. On October 5, 2015, the agency sent the Petitioner a notice, advising her that her daughter and son would be enrolled in BadgerCare+ as of October 1, 2015. However, the Petitioner would not be enrolled, due non-cooperation with the Child Support Agency. (Exhibit 3)
5. On December 3, 2015 and December 16, 2015, the agency sent the Petitioner notices, advising her that she would be enrolled in BadgerCare+ effective December 1, 2015. (See DHA file)
6. Between October 2015 and January 2016, the Petitioner had 13 contacts with the agency. On January 21, 2016, the agency advised the Petitioner that she could file a request for fair hearing. (See Exhibit 6)
7. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on February 3, 2015. (Exhibit 1)

DISCUSSION

Petitioner filed an appeal to obtain BadgerCare+ coverage for the months of October and November 2015.

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning MA must be filed within 45 days of the date of the action. Wisconsin Stat. § 49.45(5); Income Maintenance Manual § 3.3.1.

A negative action can be the denial of an application, or the reduction or termination of an ongoing case. The date of action is either the date of notice, or the effective date of the action, whichever is later.

Here, the date of action is December 16, 2015. The last date the agency provided notice of its decision to deny the Petitioner's request for coverage for October and November 2015. The petitioner's appeal was filed 49 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

If I had jurisdiction to review Petitioner's case, it is not likely the agency would have prevailed. It did not have any explanation for what it was the Petitioner was unwilling to do, that constituted non-compliance.

Petitioner indicated the only thing that child support enforcement asked her to do was complete a questionnaire about her estranged husband's income and assets, but she did not have the requested information. The Petitioner testified that she sent the questionnaire to her estranged husband, who is a [REDACTED], living in Switzerland, to complete, and that he did not return it. The Petitioner indicated that she was told such forms needed to go through her estranged husband's attorney, so the only thing she was able to obtain was a letter explaining how the child support was being paid, which she gave to the agency. (See Exhibit 5)

First, under section 5.2.1 of the BadgerCare+ Eligibility Handbook, when information is requested of the member, the information must be, "known to, possessed by, or reasonably obtainable by the applicant." There is no evidence that the requested information meets this requirement. Indeed, the agency has no idea what Petitioner was asked to provide.

Second, there is no evidence that the Petitioner refused to do anything. Being unable to complete a task is not the same thing as refusing to complete a task. The word "refuse" means to, "indicate or show that one

is not will to do something.”¹ Petitioner was not unwilling to provide the requested information. She didn’t have it. According to Petitioner, she attempted to get the questionnaire completed by an individual living overseas, when she discovered she didn’t know all of the information. When she did not receive the questionnaire back, she obtained a written statement that she provided to the agency.

Finally, there are good cause exemptions under section 5.2.1 of the BadgerCare+ Eligibility Handbook. Petitioner has no control over when or whether her estranged husband will provide information to her, nor does she have any control over what her estranged husband’s attorney will do or what advice he/she might give to the estranged husband. As such, the Petitioner certainly had good cause for a “refusal” to cooperate, if there was any.

However, as stated above, I do not have jurisdiction over this matter, because Petitioner’s appeal is untimely. As such, she will have to continue to negotiate with the agency directly.

I note to the agency, that the agency can, on its own, take corrective action. Section 28.9 of the BadgerCare+ Eligibility Handbook states, “If it is determined that a member’s benefits have been incorrectly denied or terminated, restore his or her BadgerCare Plus from the date of the incorrect denial or termination through the time period that he or she would have remained eligible.”

If Petitioner needs assistance in her negotiations with the agency, she can try to obtain free / reduced cost legal assistance from Legal Action of Wisconsin at (920) 233-6521 or 800-236-1128. Their Oshkosh office is located at 404 North Main Street, Suite 792, Oshkosh, WI 54901 and serves Sheboygan County.

CONCLUSIONS OF LAW

There is no jurisdiction as the appeal is untimely.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of

¹ See http://www.oxforddictionaries.com/us/definition/american_english/refuse

Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 8th day of April, 2016.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 8, 2016.

Sheboygan County Department of Human Services
Division of Health Care Access and Accountability